

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAY 09 2008
EAC 06 231 51097

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that he resided with his wife, married her in good faith and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a letter, additional evidence and copies of documents previously submitted.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but

that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences.

Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of India who was paroled into the United States on March 21, 2003. On April 23, 1992, the petitioner married R-S-¹, a U.S. citizen, in New York City. R-S- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on March 30, 1998. On April 8, 1998, the petitioner was served with a Notice to Appear for removal proceedings charging him as inadmissible under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1152(a)(7)(A)(i)(I). The Form I-130 petition was reopened on April 19, 2000, but subsequently terminated upon R-S-'s withdrawal of the petition on July 6, 2000. On December 21, 2000, R-S- filed a second Form I-130 petition (Receipt Number EAC 01 067 53953) on the petitioner's behalf, which was denied on December 15, 2004. The case was later reopened, but the record indicates that R-S- subsequently withdrew the second Form I-130 petition. The petitioner remains in proceedings before the New York Immigration Court and his next hearing is scheduled for May 13, 2008.

The petitioner filed the instant Form I-360 on August 7, 2006. On April 24, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through prior counsel, requested additional time to respond. On July 2, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residency, good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through prior counsel, timely responded to the NOID with additional evidence. On October 5, 2007, the director denied the petition on the three aforementioned grounds. Counsel timely appealed.

On appeal, counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director. Counsel further claims that under the Ninth Circuit Court of Appeals' decision in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003), extreme cruelty is a question of fact and the director failed to apply the appropriate legal standards. As we discuss in detail below, *Hernandez* is not a precedent binding on this case and we find no error in the director's discretionary determination that the petitioner's wife did not subject him to extreme cruelty. Counsel's remaining claims and the evidence submitted on appeal also fail to establish the petitioner's residence with his wife and his good-faith entry into their marriage.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

¹ Name withheld to protect individual's identity.

- The petitioner's affidavits dated August 3, 2006; August 6, 2007 and November 2, 2007 (the latter submitted on appeal);
- The petitioner's Form G-325A, Biographic Information, on which he stated that he resided in an apartment at [REDACTED] in the Bronx from April 1992 until the date the form was signed, October 25, 2000;
- Copy of a joint residential lease for the [REDACTED] apartment for the term from January 2, 1995 to December 31, 1996 that is signed by the petitioner and his wife;
- Partial copies of five Con Edison bills for gas and electricity jointly addressed to the petitioner and his wife, two of which are dated September 22 and November 14, 1994 and list the former couple's address as [REDACTED], and three of which are dated December 22, 1995, February 23 and April 23, 1996 and are addressed to the former couple at the [REDACTED] residence;
- Copies of two letters dated October 18, 1996 from City and Suburban Federal Savings Bank, verifying two joint accounts of the petitioner and his wife and listing their address as the [REDACTED] residence;
- Two monthly statements for one of the joint accounts addressed to the petitioner and his wife at the [REDACTED] residence. The March 31, 1998 statement lists one transaction and an ending balance of \$96. The June 30, 1998 statement lists one transaction and an ending balance of \$281;
- A copy of the passbook for the second joint account which shows periodic deposits from June 10, 1992 through July 29, 1994 and no transactions until a withdrawal on November 13, 1995, the last date listed;
- Copies of two cancelled checks made payable to the Internal Revenue Service (IRS), dated November 11, 1995 and March 15, 1996. The checks are printed with the names of the petitioner and his wife and an address at [REDACTED] in the Bronx. The checks are signed by the petitioner;
- Partial copies of joint federal and New York State income tax returns for 1993, 1994, and 1995 that are unsigned and a copy of a joint New York State income tax return for 1999 that is signed by the petitioner and his wife. The partial copy of the 1994 return is imprinted with an IRS receipt stamp dated February 21, 1995;
- Copy of a New York City Police Department Incident Information Slip regarding a burglary on October 8, 2001, during which the petitioner's passport was stolen, but which states that the burglary occurred at [REDACTED] in Jackson Heights, New York.

On the Form I-360, the petitioner stated that he resided with his wife from the date of their marriage on April 23, 1992 until 2002. As noted by the director, however, the petitioner stated in his August 3, 2006 affidavit that his wife moved out of their home in June 2001. In his August 6, 2007 affidavit, the petitioner again reiterated that the former couple separated in 2001, although he states the approximate date of their separation as August 2001. In his affidavit submitted on appeal, the petitioner claims that his wife moved out around November 2002. The petitioner does not explain his three discrepant statements regarding the date of his wife's departure except to state that because his wife left and returned in a pattern that continued for an unspecified period of time, which made it "very hard for

[him] to point out the exact date when she finally left.” While the petitioner is not required to have lived with his wife for any specific amount of time, his inconsistent statements regarding his wife’s departure date detract from the credibility of his testimony.

In his decision, the director cited discrepancies between the petitioner’s purported residence at the [REDACTED] address from 1992 to 2000, as stated on his October 25, 2000 Form G-325A and his purported marital addresses as listed on the 1995-96 lease, 1994 Con Edison bills, the two checks dated in 1995 and 1996, and the 1993 and 1994 partial tax returns, all of which list different addresses for the petitioner during that period. In his August 6, 2007 affidavit, the petitioner listed the dates of his alleged residence with his wife at three different addresses and claimed that he when he signed the Form G-325A the residence portion was blank and his former attorney later completed the form incorrectly. On appeal, the petitioner states that his former attorney would fill out forms and give them to him to sign and the petitioner “did not know exactly what fields are to be filled and which are not.” The petitioner’s explanation is equivocal and does not fully resolve the discrepancies regarding his address from 1992 to 2000 as listed on his 2000 Form G-325A and the other, relevant, jointly-addressed documents in the record.

As noted by the director, the banking documents contain no evidence that both the petitioner and his wife used the accounts and the two monthly statements and passbook list no regular withdrawals indicating payments for rent, utilities or other basic living expenses. On appeal, the petitioner states that the former couple’s income was very low and they paid for most of their expenses with cash. The petitioner asserts that his wife had “unlimited access” to the accounts, but he “wrote most of the checks.” To explain the lack of documentation of joint use of the accounts, the petitioner states that the bank “moved out from my neighborhood and I am not sure if this bank still exists and therefore I was not able to obtain additional records.”

The residential lease for the [REDACTED] residence is for only two years, from January 1995 through December 31, 1996, despite the petitioner’s testimony that he and his wife shared this residence for seven years from September 1994 to August 2001. The petitioner provided no lease or other residential agreements for either of the two other addresses at which he claims to have lived with his wife from April 1992 to September 1994. In his August 6, 2007 affidavit, the petitioner generally stated that he had “already submitted what [he] could obtain” regarding his residence with his wife, but he does not specify what steps he took to obtain further documentation or other evidence from third parties.

The receipt-stamped partial copy of the former couple’s 1994 tax return and the cancelled checks made payable to the IRS indicate that the petitioner and his wife may have jointly filed tax returns for 1994 and 1995. The five monthly Con Edison bills also indicate that the former couple had one joint utilities account from September 1994 to April 1996. These documents alone, however, do not establish that the petitioner and his wife actually resided together given the unresolved discrepancies in the record.

In regards to the address listed on the police incident report, the petitioner states on appeal that he was visiting a friend when his friend’s apartment was burglarized and that is the reason why a different

address is listed on the police report. The petitioner fails to explain, however, why he brought his passport while visiting his friend when, at the time, he claims² to have been residing with his wife in the same city as his friend.

In sum, the relevant evidence provides intermittent documentation and contains unresolved discrepancies regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In his August 3, 2006 affidavit the petitioner stated that he first met his wife at a friend's party around Christmas of 1991 and that he also used to see her at the store where he was working. The petitioner reports that the former couple "lived happily together as husband and wife for over seven years," but he does not further describe how he met his wife, their courtship, decision to marry, their wedding or any of their shared experiences, apart from the alleged abuse. In his August 6 and November 2, 2007 affidavits, the petitioner provided no further relevant information.

In addition to the evidence listed in the preceding section, the record contains several documents regarding the petitioner's lawsuit against his former employer for injuries he suffered when he was shot during a robbery of the store where he was working on May 7, 1999. The petitioner and his wife are co-plaintiffs on the case, which evidence submitted on appeal shows was filed with the New York County, Supreme Court of New York State in 2000. On appeal, counsel claims that the documentation of the lawsuit "is a [sic] prima facie evidence that Petitioner and his wife in fact had a bonafide marriage because naming her as a plaintiff in this law suit entitles her for [sic] substantial monetary awards." While the petitioner stated in his August 3, 2006 affidavit that he and his wife "settled the suit for damages of \$40,000, which [they] divided[.]" the relevant documents do not contain evidence of any monetary award. Moreover, in his affidavits the petitioner has stated that he and his wife separated in 2001 or 2002, two to three years before the disposition of the lawsuit in 2004.

The petitioner claims that he and his wife lived together for nine or ten years before their separation. However, as discussed in the preceding section, the record contains only intermittent joint documentation, nearly all of which is dated shortly before the former couple's interviews with immigration officers. In his August 6, 2007 affidavit the petitioner stated that he was unable to provide further documentation, as he had "already submitted what [he] could obtain," although the petitioner does not describe any of his efforts to obtain further evidence from third parties. The petitioner also indicated that he would submit documentation from the IRS of the filing of his 1998 and 1999 tax returns, which would take between 45 and 60 days to obtain. The petitioner did not submit such

² On his Form I-360 and in his November 2, 2007 affidavit, the petitioner states that he resided with his wife in New York City until 2002.

documentation with his appeal, which was filed 90 days later and the petitioner provides no explanation for his failure to do so.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the petitioner has submitted documents that contradict his prior statement regarding his residence during eight of the nine to ten years of his marriage on his 2000 Form G-325A. The petitioner also indicated that he would provide documentation from the IRS, but then failed to do so. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of his claim.³ In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavits dated August 3, 2006; August 6 and November 2, 2007;
- March 20, 2003 letter from [REDACTED]
- July 20, 2006 psychological report of the petitioner by [REDACTED] and [REDACTED]
- August 1, 2007 psychosocial report of the petitioner by [REDACTED].

In his August 3, 2006 affidavit, the petitioner stated that after he was shot during the robbery of the store where he was working in 1999, he was hospitalized for six months and spent 14 months at a rehabilitation center. The petitioner explains that his absence "naturally affected [his and his wife's] relationship over time." The petitioner states that his wife helped him, "but she didn't do it with any feeling of sympathy, nurturing or affection" and he "felt that she had grown apart from [him] while [he] was in the hospitals." The petitioner further explains that his unsightly wound "turned off" his wife who refused to have intimate relations with him and would insult his appearance. The petitioner states that when he was discharged from the hospital, but was still unable to work, his wife suggested that he go back to India because he had "people there who [could] take care of [him]." The petitioner also reports that he would have nightmares about the shooting and would wet the bed, which infuriated his wife. The petitioner states that his wife "steadily grew more distant" and moved to her mother's home in June 2001. The petitioner reports that he visited his wife and tried to reconcile, but she was not interested and eventually moved away in 2005.

³ In his August 1, 2007 psychosocial report, [REDACTED] conveys further information regarding the petitioner's relationship with his wife, but the petitioner does not discuss the incidents and feelings he purportedly conveyed to [REDACTED] in any of his own affidavits.

In his August 6, 2007 affidavit regarding extreme cruelty, the petitioner reiterates that his wife would insult his appearance and states that she spent less time with him because he was less attractive to her. The petitioner claims that his wife “always reminded me that she is the one who sponsored me and she has influence on my deportation,” but he does not describe any particular incidents or threats in probative detail. The petitioner also reports that his wife would occasionally leave their home for three to four days even though he needed her help and that she made him feel as though he was “a burden for her.” The petitioner concludes, “She just walked away from my life and I consider this as a breach of trust.” In his November 2, 2007 affidavit, the petitioner does not further discuss the alleged abuse.

The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery. Accordingly, we will only discuss the petitioner’s claim of extreme cruelty. While we do not discount the trauma the petitioner experienced as the victim of a violent crime,⁴ his testimony does not indicate that his wife’s behavior after his hospitalization rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The petitioner’s statements regarding his wife insulting his appearance, refusing to have intimate relations, suggesting that he return to India where other people could care for him, her anger when he wet their bed and her eventual abandonment do not establish that his wife subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence.

The letter from [REDACTED] and the reports of [REDACTED] and [REDACTED] also fail to establish that the petitioner’s wife subjected him to extreme cruelty. [REDACTED] who treated the petitioner for three months during his return to India in 2003, certified that the petitioner suffered from “severe depression due to post-traumatic stress,” but [REDACTED] did not identify the underlying trauma or provide any information indicating that the abuse of the petitioner’s wife was a causative or contributing factor in his mental health condition.

[REDACTED] states that the petitioner was referred by his former counsel and that his report is based on one meeting with the petitioner of unspecified length on July 19, 2006, four to five years after the petitioner separated from his wife. [REDACTED] diagnoses the petitioner with major depressive disorder and conveys the petitioner’s description of his wife’s insults of his appearance and masculinity and her refusal to have intimate relations. [REDACTED] does not indicate that he treated or recommended any treatment for the petitioner.

[REDACTED] also states that the petitioner was referred by his former counsel and that his report is based on one interview of unspecified length on August 1, 2007, five to six years after the petitioner separated from his wife. [REDACTED] diagnoses the petitioner with major depressive disorder, post-traumatic stress

⁴ We note that the petitioner has filed a Form I-918, Petition for U Nonimmigrant Status (Receipt Number EAC 08 126 50084) which is currently pending with the Vermont Service Center.

disorder (PTSD) and panic attacks, yet [REDACTED] does not indicate that he treated or recommended any treatment for the petitioner's condition. [REDACTED] identifies the petitioner's shooting as the underlying trauma of his PTSD, which was "further traumatized" by his wife's behavior upon his return home. Dr. [REDACTED] conveys the petitioner's description of his wife's increasing physical and emotional distance after his hospitalization and her disgust with his injury and altered appearance. [REDACTED] reiterates the petitioner's claim that his wife rejected his physical intimacy. [REDACTED] also reports several behaviors of the petitioner's wife that the petitioner himself does not discuss in any of his affidavits. For example, [REDACTED] states that the petitioner's wife would call him a "stupid immigrant" and use other "disgusting expletives;" that she told him "she would outright lie to the DHS that there [sic] marriage was not valid" and that when they were interviewed separately by an immigration officer, his wife told him the interview went well, but he later discovered that she had lied and withdrawn her petition. Dr. [REDACTED] further states that the petitioner "felt that he could not move around freely in his own home without feeling intimidated by [his wife's] hostile presence and he feels that this served to help her control him." Yet the petitioner discusses none of these latter three behaviors of his wife in any of his own statements.

While we do not question the expertise of [REDACTED] and [REDACTED], their testimony fails to establish that the behavior of the petitioner's wife rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] briefly attested to the petitioner's depression and post-traumatic stress, but did not identify the underlying trauma or otherwise indicate that the petitioner's wife impacted his mental health condition. [REDACTED] only focuses on the petitioner's wife's rejection of his physical intimacy and does not provide substantive, probative information indicating that her behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. While [REDACTED] provides a more comprehensive description of the behavior of the petitioner's wife, he discusses actions of the petitioner's wife that the petitioner himself does not mention in any of his own testimony, which creates inconsistencies that detract from the probative value of [REDACTED] testimony.

On appeal, counsel claims that the petitioner established extreme cruelty under the standards construed by the Ninth Circuit Court of Appeals in *Hernandez v. Ashcroft*, 345 F.3d 824, 833-35 (9th Cir. 2003). In *Hernandez*, the court held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Moreover, the Fifth and the Tenth Circuit Courts of Appeals have come to a contrary conclusion. *Wilmore v. Gonzales*, 455 F.3d 524, 527-28 (5th Cir. 2006); *Perales-Cumpean v. Gonzales*, 429 F.3d 977, 982-984 (10th Cir. 2005). Although *Wilmore* and *Perales-Cumpean* concerned applications for cancellation of removal, the both courts cited the definition of battery or extreme cruelty for self-petitioners at 8 C.F.R. § 204.2(c)(1)(vi) and found the definition "far from algorithmic" because it "requires consideration of many discretionary factors" and "does not provide a binding, objective standard that would channel the [agency's] discretion in a manner making it subject to judicial review." *Perales-Cumpean*, 429 F.3d at 984. *Accord Wilmore*, 455 F.3d at 527-28.

Even if *Hernandez* were binding on this case, the relevant evidence fails to establish that the petitioner's wife subjected him to extreme cruelty under the clinical and legal standards cited by the Ninth Circuit. As discussed above, the petitioner failed to describe in probative detail any specific threatening or controlling behavior of his wife. Nor did the petitioner demonstrate that her nonviolent actions and rejection of his intimacy constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. *See Hernandez*, 345 F.3d at 836–41 (describing the cycle of domestic violence and interpreting the phrase “acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence” in 8 C.F.R. § 204.2(c)(1)(vi)).

The petitioner does not claim and the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he resided with his wife, that he entered into their marriage in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.